

REMARKS

In the Office Action, the Examiner withdrew the finality of the rejection of the last Office Action. The Examiner also rejected claims 1-4 under 35 U.S.C. § 103(a) as unpatentable over Waters et al. (U.S. Patent No. 5,907,607) in view of Barnhouse et al. (U.S. Patent No. 6,418,461). Applicants respectfully traverse the rejection.

At the outset, Applicants respectfully submit that the Barnhouse et al. patent is not prior art to this application. Therefore, the rejection of claims 1-4 based on a combination of Waters et al. and Barnhouse et al. is improper and should be withdrawn.

The present application claims priority to U.S. Patent Application, Serial No. 09/128,937 as a continuation-in-part. U.S. Patent Application, Serial No. 09/128,937 issued on July 9, 2002, as the Barnhouse et al. patent.

A continuation-in-part application obtains the benefit of the filing date of an earlier non-provisional application if the following requirements are met: (A) the alleged continuation-in-part application discloses or repeats a substantial portion of the first application; (B) the first application and the alleged continuation-in-part application were filed with at least one common inventor; (C) the alleged continuation-in-part application was filed before the patenting or abandonment of or termination of proceedings on the first application or an application similarly entitled to the benefit of the filing date of the first application; and (D) the alleged continuation-in-part application contains or is amended to contain a specific reference to the earlier filed application (M.P.E.P. 201.08).

With regard to requirement (A), the present application repeats a substantial portion of the Barnhouse et al. patent. For example, at page 1 of the present application, the present

application incorporates by reference the entire disclosure of the Barnhouse et al. patent.

Therefore, the present application necessarily repeats a substantial portion of the Barnhouse et al. patent. With regard to requirement (B), the present application contains at least one inventor in common with the Barnhouse et al. patent. For example, the inventor, Kelvin Porter, is common between the present application and the Barnhouse et al. patent. With regard to requirement (C), the present application was filed before the patenting or abandonment of or termination of proceedings on the Barnhouse et al. patent. The present application was filed on October 20, 1999 prior to the July 9, 2002 issue date of the Barnhouse et al. patent. With regard to requirement (D), the present application contains a specific reference to the Barnhouse et al. patent. The "Cross-Reference to Related Application" section of the present application includes a reference and a claim of priority to U.S. Patent Application, Serial No. 09/128,937, which issued as the Barnhouse et al. patent.

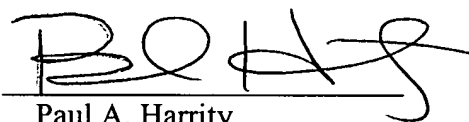
Because all of the requirements are met, the present application is a proper continuation-in-part application of U.S. Patent Application, Serial No. 09/128,937 (i.e., the Barnhouse et al. patent). Therefore, the present application gets the benefit of the earliest effective filing date of the Barnhouse et al. patent. As a result, the Barnhouse et al. patent is not prior art to the present application.

Because the Barnhouse et al. patent is not prior art to the present application, the Examiner's rejection of claims 1-4 under 35 U.S.C. § 103 based on a combination of Waters et al. and Barnhouse et al. is improper and should be withdrawn.

In view of the foregoing remarks, Applicants respectfully request the Examiner's reconsideration of the application and the timely allowance of pending claims 1-4.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 13-2491 and please credit any excess fees to such deposit account.

Respectfully submitted,  
HARRITY & SNYDER, L.L.P.

By:   
Paul A. Harrity  
Reg. No. 39,574

Date:

11240 Waples Mill Road  
Suite 300  
Fairfax, Virginia 22030  
(571) 432-0800